IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8749 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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Versus

SURAT MUNICIPAL CORPORATION

Appearance:

MR MIHIR H JOSHI for the Petitioners.

MR PRASHANT G DESAI for the Respondent.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 17/01/2002

ORAL JUDGEMENT

This is a petition for quashing and setting aside the order dated 13th June, 2000 of the respondent rejecting the application of the petitioner for refund of the amount deposited towards octroi during the period from 29th February, 2000 to 13th April, 2000

aggregating to Rs. 3,43,896/- with interest at the rate of 21% per annum. The petitioner is a public limited company engaged in the business of manufacturing newsprints and papers at its factory situated at the address shown in the title of the petition. The second petitioner is a shareholder of the first petitioner company. For the purpose of its business, the petitioner company purchased various goods including steam coal which were brought to the factory from different places during the period from February 2000 to May 2000. The petitioner was taking steal coal and passing on Icchapore-Jehangirpura road passing through Surat city. At the relevant time, Icchapore-Jehangirpura road was under repairs and was closed and hence the petitioner had to pass through Surat city. The truck carrying the goods came in the municipal limits of the respondent Corporation to the factory of the petitioner which is admittedly outside the limits. The respondent Corporation demanded payment of octroi deposit in respect of the said goods at the time of their entry in the limits of the respondent Corporation. Accordingly, the petitioner deposited Rs. 4,91,340/- towards such octroi. The petitioner learnt that the application for refund had to be made within 30 days of deposit of the amount. On 25th May, 2000 the petitioner made an application for refund of the amount of Rs. 1,40,976/being the amount deposited between the period from 24th April, 2000 to 16.5.2000. On the same day, the petitioner addressed a letter to the respondent Municipal Commissioner setting out the facts and circumstances and requesting the Commissioner to condone the delay in filing the refund application and also grant two weeks' time for filing such application in respect of the deposit made between the period from 29th February 2000 to 13th April, 2000. The petitioner made a refund application for the period from 29th February, 2000 ide applications dated 29.5.2000 and 30.5.2000. Inspite of the application, the octroi deposited by the petitioner was not refunded to it. The petitioner also sent several reminders in this respect to the respondent Corporation. Lateron, the petitioner also sent a representation to the Commissioner of the respondent Corporation on 21st June, 2000 stating therein all the facts and circusmstances with a request that the amoumt deposited as octroi by the petitioner should be refunded by levying nominal penalty, if any. When the refund was not granted by the respondent Corporation, the petitioner has filed this petition with the aforesaid prayer on the ground that the goods in question are admittedly not eligible to octroi inasmuch as they have not been used, consumed or sold within the limits of the respondent Corporation. Therefore, any levy and

collection on this count is unauthorised and unconstitutional. The respondent is not authorised to retain such amount under law and more particularly when the amount collected as octroi is not payable in respect of the goods. Therefore, the retention of the amount is not legal. As the amount is not leviable and the amounts have already been deposited as a requirement of the procedure device by the respondent for its own convenience, the time limit stipulated in Rule 18(3) has to be construed as being directory and certainly not a breach which would extinguish the constitutional right of the petitioner.

2. The respondent Corporation has filed affidavit-in-reply stating therein that the petition is not maintainable and the application filed by the petitioner was not within the time limit prescribed under the standing orders. Rule 18 proides that the said amount will be refunded from the municipal office provided that the application for refund together with transit pass in the prescribed form and the declaration receipt in the office of the Commissioner not later than 30 days next after the date of exportation of the said goods. In the present case, the petitioner filed the application beyond 30 days and hence the petitioner is not entitled for the refund of any amount. The application of the petitioner was rejected by the respondent Corporation vide letter dated 13th June, 2000 stating therein that the application for refund was rejected under Rule 18(3) of the Octroi Rules of the respondent Corporation as the application was not submitted within stipulated time limit of 30 days. The respondent Corporation again by its letter dated 13th July, 2000 rejected the representation of the petitioner stating that the Corporation had already informed by its letter dated 13th June, 2000 about rejection of the petitioner's application. The respondent Corporation can retain such amount and forfeit the same as per Octroi Rules.

3. Heard the learned counsel for the parties. The controversy in the present petition is only that the application made by the petitioner for refund of the octroi was made beyond the prescribed period of 30 days. The contention of the learned counsel for the petitioner is that under section 127 of the B.P.M.C. Act 1949, the Corporation is entitled to impose octroi and octroi has been defined under section 2(42) of the said Act. "Octroi" mens a cess on the entry of goods into the limits of a city for consumption, use or sale thereof. In the present case, admittedly the goods were not used,

consumed or even sold in the municipal limits of the respondent Corporation. The goods of the petitioner had passed only from one octroi naka to another naka. Even the trucks in which the goods of the petitioner was loaded had not stopped at any places within the limits while going through municipal limits. As such, the goods were not consumed, used or sold within the municipal limits. Hence, no octroi can be levied on the goods of the petitioner. Under list II of the State list of the 7th schedule, the tax can be imposed under item 52 of the list II of the State of the 7th schedule. The tax can be levied on the octroi of goods in a local area for consumption, use or sale therein. According to the learned counsel for the petitioner, if the goods have entered in local areas which are not for consumption, use or sale, then tax cannot be levied. The contention of the learned counsel for the petitioner is that not refunding the amount of octroi which has been paid by the petitioner would amount to violation of constitutional right under the Constitution. Under the law, the respondent Corporation is required to refund the amount of octroi deposited by the petitioner even if no application is filed for refund if the articles hae not been consumed, used or sold within the limits of the Corporation. In this connection, he also relied on the judgment of the Supreme Court in the case of Tata Engineering and Locomotive Company Ltd. vs. The Municipal Corporation of the city of Thane reported in AIR 1992, SC, 645. The relevant portion is extracted below:

"Rules provide for deposit of a certain sum of money or the actual octroi duty payable subject to a right to get a refund of the same when the goods are exported. When the goods in respect of which octroi was paid are exported, the octroi became refundable aand that is the ery scheme of the levy of octroi. The octroiable event in such a case shall be deemed not have happened. Right torefund arises becausee the goods are not consumed inside the area but exported and the tax becomes not leviable. The rules merely regulate the symstem on which refunds shall be allowed. The procedure prescribed and the need to adhere to the procedure shall have to be considered in the light of these legal incidence and nature of octroi duty."

The said proposition of law has been accepted and confirmed by the Supreme Court in the case of Hindustan Petroleum Corporation LOtd. vs. Okha Gram Panchayat and

others reported in AIR 1994, SC, 916. It is also confirmed as under:

"Be that as it may, we must keep in mind the essential nature of the tax/duty contemplated by Entry 52 of List II of the Seventh Schedule to the Constitution while construing the said Rule inasmuch as the Gujarat Panchayat Act 1961 and the Rules are referable to that Entry and that Entry alone. We are therfore, of the opinion that Explanation creates a rebuttable presumption and not an irrebutable presumption and that the object behind prescribing the period of twomonths in clause (ii) was merely to emphasise that after the expiry of two months the burden cast upon the person becomes heavier, viz., the burden to establish that the goods which have been imported into the octroi limits and whereon octroi has been paid have been exported without being used, consumed or sold within the limits."

Thus, the contention of the learned counsel for the petitioner is that the constitutional scheme is that if any goods has passed through municipal limits and under certain Act, octroi has to be collected at the entry, that amount has to be deposited if article has been exported and that article is not used, consumed or sold in that limit, no tax/octroi can be levied. If such amount is detained or noto refunded that would amount to breach of constitutional right.

4. On the contrary, the learned counsel for the respondent Corporation contended that under section 147 of the B.P.M.C. Act 1949, it is provided that until the contrary is proved, any goods imported into the city shall be presumed to have been imported for the purpose of consumption, use or sale thereof unless such goods are conveyed from the place of import to the place of export by such routes, within such time, under such supervision and on payment of such fees therefor as shall be determined by the standing orders. Under Standing order no.11, the truck is required to pass the municipal limits within three hours and articles are not to be stopped at any place and that must have a transit pass and that transit pass must be deposited with the Corporation and the goods should remain intact and should not be changed in any form. Thus, the petitioner is required to move the authority concerned. Thus, the petitioner is required to move the authority concerned to prove that the goods were passed within three hours, they had not stopped at any place and they had transit pass and that

transit pass was deposited with the Corporation and the goods had remained intact and they were not changed in any form. For that purpose, a prescribed form is required to be filled up by the petitioner. Under Rule 18(3), time is prescribed for moving the authority concerned for refund within 30 days after the date of exportation of the said goods. In the present case, the petitioner has filed application beyond time limit and the merits of the application have not been considered at all. As such, the petitioner's application having been moved beyond time limit cannot be entertained and the Corporation was fully justified in not entertaining the application.

5. I have carefully examined the contentions of the learned counsel for the parties. From the constitutional scheme, it appears that if articles hae not been used, consumed or sold within the limits of Municipal Corporation and if the articles have been exported through municipal limits, no octroi can be levied on such articles. If no octroi can be levied on such articles, which had entered into the municipal limits and exported without any delay with transit pass after depositing required amount, then the Municipal Corporation is required to refund the amount of octroi deposited by the person concerned. In the present case, from the affidavit-in-reply, it does not appear that the petitioner has violated any standing order or rules except that the petitioner has filed the application for refund beyond the prescribed period of 30 days and on that ground alone, the application of the petitioner has been filed inspite of the fact that the Municipal Corporation has already granted refund within one month in cases where the goods were exported through municipal limits. Delay in presenting application for refund of octroi even beyond the time limit prescribed under Rule or Standing Order does not come in way for the entitlement of refund.

6. In the facts and circumstances of the case and in light of the observations made in the aforesaid case laws, this petition deserves to be allowed and is accordingly hereby allowed. The order dated 13.6.2000 passed by the respondent Corporation is hereby quashed and set aside. The respondent Corporation is directed to re-consider the application of the petitioner for refund of the octroi amount already deposited, within a period of three weeks from the presentation of copy of this judgment. In the event, if the respondent Corporation comes to the conclusion that the petitioner is entitled for the refund of the octroi amount deposited

by it, the Corporation will refund the same to the petitioner within a period of three weeks therafter with interest, if any, permissible. Rule is made absolute accordingly with no order as to costs.

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